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In re Application of
LEAH, et al. : DECISION ON PETITION
U.S. Application No.: 10/588,897 :
PCT No.: PCT/GB05/00355 : UNDER 37 CFR 1.181
Int. Filing Date: 02 February 2005 :
Priority Date: 10 February 2004 :
Atty Docket No.: XA-10629 :
For: A METHOD AND APPARATUS FOR :
OPERATING A SOLID-OXIDE FUEL CELL :
STACK WITH A MIXED....ELECTROLYTE :
:

This decision is in response to applicant's correspondence filed 24 November 2008 in the United States Patent and Trademark Office (USPTO). The filing is being treated as a petition under 37 CFR 1.181 to accord a 35 U.S.C. 371 date of 14 October 2008. No petition fee is required.

BACKGROUND

On 02 February 2005, applicant filed international application PCT/GB05/00355, which claimed priority to an earlier application filed 10 February 2004. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 25 August 2005. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 10 August 2006.

On 10 August 2006, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1) and a preliminary amendment.

On 12 August 2008, applicant was mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) informing applicant of the need to provide a signed oath or declaration of the inventor, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date.

On 14 October 2008, applicant responded with an executed combined declaration and power of attorney.

On 30 October 2008, applicant was mailed a NOTIFICATION OF DEFECTIVE

RESPONSE (Form PCT/DO/EO/916) informing applicant that the declaration was defective as, "the address of the first three inventors have been scratched through and are hand written." Applicant was afforded one month or the extendable time remaining from the mail date of the Form PCT/DO/EO/905 to file a proper response.

On 24 November 2008, applicant filed the present petition.

DISCUSSION

Applicant concedes that the declaration filed 14 October 2008 contained non-initialed alterations. However, applicant contends that the mailing of a Form PCT/DO/EO/916 was not appropriate as the information on the declaration which was altered (post office addresses of inventors 1-4) is not a requirement of the declaration under 37 CFR 1.497(a)-(b). Applicant has presently provided a supplemental Application Data Sheet providing the updated post office addresses as a redress.

Applicant is correct that the post office addresses of the inventors is not a requirement under 37 CFR 1.497(a)-(b) and that as discussed in that section, "if the oath or declaration does not also meet the requirements of § 1.63, a supplemental oath or declaration in compliance with § 1.63 or an application data sheet will be required in accordance with § 1.67." However, once the information is supplied on the declaration, that information becomes part of the declaration and cannot be altered without being dated and initialed by the applicant on the same sheet of paper. (See Manual of Patent Examining Procedure sections 602.01 and 605.04(a).) Further, 37 CFR 1.52(c) requires that:

Any interlineation, erasure, cancellation or other alteration of the application papers filed must be made before the signing of any accompanying oath or declaration pursuant to § 1.63 referring to those application papers and should be dated and initialed or signed by the applicant on the same sheet of paper. Application papers containing alterations made after the signing of an oath or declaration referring to those application papers must be supported by a supplemental oath or declaration under § 1.67.

As such the filed declaration is not compliant and it would not be proper to accord the application a 35 U.S.C. 371 date of 14 October 2008. Further, the filing of the supplemental Application Data Sheet is not considered a valid response to the Form PCT/DO/EO/916 and as the period for responding has expired this application is considered abandoned as to the National stage in the United States.

CONCLUSION

For the reasons detailed above, applicant's petition under 37 CFR 1.181 is **DISMISSED**.

This application is **ABANDONED**.

This application is being forward to the Office of PCT Operations, National stage processing for the preparation and mailing of a "Notification of Abandonment" (Form PCT/DO/EO/909).



Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (571) 272-3294
Fax: (571) 273-0459